

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IVORY J. VALENTINE,

No. C 09-4586 MHP (pr)

Petitioner,

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

v.

Warden CURRY,

Respondent.

Ivory J. Valentine, an inmate at the Correctional Training Facility in Soledad, filed this pro se action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. His petition is now before the court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases. His in forma pauperis application also is before the court for review.

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). A district court considering an application for a writ of habeas corpus shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory, palpably incredible, or patently frivolous or false. See Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990).

1       The court simply does not understand what claims petitioner is attempting to assert or  
2 what decision he is challenging. The petition is an 84-page document that is a blend of some  
3 original writing interwoven with court orders and other documents (such as numerous proofs  
4 of service, a radiologist's report and a program status report), and has attached to it 182 pages  
5 of exhibits. The odd assembly of the petition, coupled with bloviated writing, leaves the  
6 reader unsure what exactly the petitioner is complaining about, as well as what he wants the  
7 court to do. Leave to amend will be granted so that petitioner may file an amended petition  
8 that presents a coherent statement of his claim(s) consistent with the following directions:

9       First, the amended petition, including any legal argument, may not exceed 25 pages in  
10 length.

11       Second, the amended petition must identify the prison administrative or disciplinary  
12 decision being challenged. Petitioner should identify the date of the decision, the result of  
13 the decision, and how it affected the fact or duration of his confinement. If petitioner wants  
14 to challenge more than one decision, he must choose one decision to be the subject of his  
15 amended petition in this action, and file separate new petitions for every other decision he  
16 wants to challenge. Those new petitions should not have the case number for this case on  
17 them, as each will be assigned a separate case number.

18       Third, petitioner may assert claims about a prison administrative or disciplinary  
19 decision, but may not assert as a claim for relief a claim that the state court erred in  
20 reviewing one of his habeas petitions. Errors in the state post-conviction review process are  
21 not addressable through federal habeas corpus proceedings. See Ortiz v. Stewart, 149 F.3d  
22 923, 939 (9th Cir. 1998); Gerlaugh v. Stewart, 129 F.3d 1027, 1045 (9th Cir. 1997);  
23 Villafuerte v. Stewart, 111 F.3d 616, 632 n.7 (9th Cir. 1997); Franzen v. Brinkman, 877 F.2d  
24 26, 26 (9th Cir.), cert. denied, 493 U.S. 1012 (1989). Challenges to such errors do not  
25 generally represent an attack on the prisoner's detention and therefore are not proper grounds  
26 for habeas relief. See id. They instead generally pertain to the review process. See, e.g., 28  
27 U.S.C. § 2254(I) (claims of ineffective assistance of state or federal post-conviction counsel  
28

1 not cognizable on federal habeas review); Hopkinson v. Shillinger, 866 F.2d 1185, 1218-20  
2 (10th Cir. 1989) (state court's summary denial of petition for post-conviction relief is  
3 procedural deficiency in review process that does no violence to federal constitutional  
4 rights); Millard v. Lynaugh, 810 F.2d 1403, 1410 (5th Cir. 1987) (denial of hearing on state  
5 collateral proceedings not addressable in federal habeas).

6 Fourth, if petitioner wants to allege a due process violation, he must clearly identify  
7 each procedural protection of which he was deprived. Petitioner is cautioned that federal  
8 habeas relief is available only if one of the procedural protections required by the federal  
9 constitution is violated and not for violations of state regulations and prison rules. The Due  
10 Process Clause does not require that a prison comply with its own, more generous procedures  
11 than those required by the federal constitution. See Walker v. Sumner, 14 F.3d 1415, 1419-  
12 20 (9th Cir. 1994).

13 For the foregoing reasons, the petition is dismissed with leave to file an amended  
14 petition no later than **May 7, 2010**. The amended petition should have this case caption and  
15 case number on the first page and should be clearly marked "Amended Petition." Petitioner's  
16 in forma pauperis application is DENIED because he has sufficient funds to pay the filing  
17 fee. Petitioner must pay the \$5.00 filing fee no later than **May 7, 2010**. Failure to file the  
18 amended petition or pay the filing fee by the deadline will result in the dismissal of this  
19 action.

20 IT IS SO ORDERED.

21 DATED: April 2, 2010

  
Marilyn Hall Patel  
United States District Judge